## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICK SUTLEY,	
Plaintiff,	) ) )    Civil Action No. 07-105 Erie
INTERNATIONAL PAPER COMPANY,	
Defendant.	

## **MEMORANDUM ORDER**

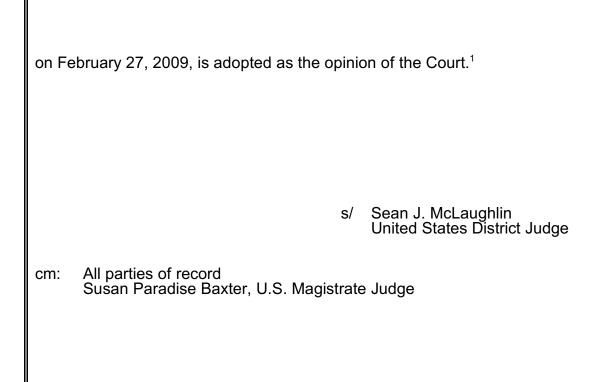
Plaintiff, Rick Sutley's, Employee Retirement Income Security Act ("ERISA") complaint was received by the Clerk of Court on May 9, 2007, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 27], filed on February 27, 2009, recommended that the motion for summary judgment filed by Defendant [Doc. No. 12] be denied, and that the motion for summary judgment filed by the Plaintiff [Doc. No. 15] be granted in part and denied in part, but that the matter be remanded to the Plan Administrator for further proceedings. The parties were allowed ten (10) days from the date of service to file objections. Plaintiff filed objections and a brief in support of his objections on March 9, 2009 [Doc. No. 28 and Doc. No. 29]; no objections were filed by Defendant. After de novo review of the documents in the case, together with the Report and Recommendation and Plaintiff's objections thereto, the following order is entered:

AND NOW, this 16th day of March, 2009;

IT IS HEREBY ORDERED that the Defendant's Motion for Summary Judgment [Doc. No. 12] is DENIED; Plaintiff's Motion for Summary Judgment [Doc. No. 15] is GRANTED in part and DENIED in part; the case is hereby REMANDED to the Plan Administrator for further proceedings.

The Report and Recommendation [Doc. No. 27] of Magistrate Judge Baxter, filed



<sup>&</sup>lt;sup>1</sup>The Court does not adopt, however, the Magistrate Judge's characterization at page 14 of the Report and Recommendation of the application of the <u>Pinto/Post</u> "heightened arbitrary and capricious standard" in <u>Hession v. Prudential Insurance Co. v. North America</u>, 2008 WL 5207089 (3<sup>rd</sup> Cir. 2008), as "inexplicable."